

AMENDED IN ASSEMBLY MARCH 29, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 1424

Introduced by Assembly Member Davis

February 23, 2007

An act to amend ~~Sections 166, 1050, and 12021~~ *Section 166* of the Penal Code, relating to elder abuse, ~~and declaring the urgency thereof, to take effect immediately.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1424, as amended, Davis. Elder abuse.

Existing law provides that violation of specified restraining or stay-away orders constitute a contempt of court, and are punishable by imprisonment in the county jail not exceeding one year, a fine not exceeding \$1,000, or both imprisonment and that fine.

This bill would add to these provisions, orders relative to criminal proceedings involving elder abuse, as specified.

By expanding the scope of an existing crime, this bill would impose a state-mandated local program.

~~Existing law provides for the continuance of trials for “good cause” which is defined to include specified reasons.~~

~~This bill would include within the definition of “good cause” for purposes of a trial continuance, cases involving elder abuse, as defined.~~

~~Existing law provides that, subject to exceptions, a person convicted of one or more of certain misdemeanors and who, within 10 years of the conviction, owns, purchases, receives, or has in his or her possession or under his or her custody or control, any firearm is guilty of an offense.~~

~~This bill would add elder abuse, as defined, to the list of misdemeanors to which the firearms prohibition applies, as described above.~~

~~By expanding the scope of an existing crime, this bill would impose a state-mandated local program~~

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~This bill would declare that it is to take effect immediately as an urgency statute.~~

Vote: $\frac{2}{3}$ -majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 166 of the Penal Code is amended to
2 read:

3 166. (a) Except as provided in subdivisions (b), (c), and (d),
4 every person guilty of any contempt of court, of any of the
5 following kinds, is guilty of a misdemeanor:

6 (1) Disorderly, contemptuous, or insolent behavior committed
7 during the sitting of any court of justice, in the immediate view
8 and presence of the court, and directly tending to interrupt its
9 proceedings or to impair the respect due to its authority.

10 (2) Behavior as specified in paragraph (1) committed in the
11 presence of any referee, while actually engaged in any trial or
12 hearing, pursuant to the order of any court, or in the presence of
13 any jury while actually sitting for the trial of a cause, or upon any
14 inquest or other proceedings authorized by law.

15 (3) Any breach of the peace, noise, or other disturbance directly
16 tending to interrupt the proceedings of any court.

17 (4) Willful disobedience of the terms as written of any process
18 or court order or out-of-state court order, lawfully issued by any
19 court, including orders pending trial.

20 (5) Resistance willfully offered by any person to the lawful
21 order or process of any court.

22 (6) The contumacious and unlawful refusal of any person to be
23 sworn as a witness; or, when so sworn, the like refusal to answer
24 any material question.

25 (7) The publication of a false or grossly inaccurate report of the
26 proceedings of any court.

1 (8) Presenting to any court having power to pass sentence upon
2 any prisoner under conviction, or to any member of the court, any
3 affidavit or testimony or representation of any kind, verbal or
4 written, in aggravation or mitigation of the punishment to be
5 imposed upon the prisoner, except as provided in this code.

6 (b) (1) Any person who is guilty of contempt of court under
7 paragraph (4) of subdivision (a) by willfully contacting a victim
8 by phone or mail, or directly, and who has been previously
9 convicted of a violation of Section 646.9 shall be punished by
10 imprisonment in a county jail for not more than one year, by a fine
11 of five thousand dollars (\$5,000), or by both that fine and
12 imprisonment.

13 (2) For the purposes of sentencing under this subdivision, each
14 contact shall constitute a separate violation of this subdivision.

15 (3) The present incarceration of a person who makes contact
16 with a victim in violation of paragraph (1) is not a defense to a
17 violation of this subdivision.

18 (c) (1) Notwithstanding paragraph (4) of subdivision (a), any
19 willful and knowing violation of any protective order or stay away
20 court order issued pursuant to Section 136.2, in a pending criminal
21 proceeding involving domestic violence, as defined in Section
22 13700, or issued as a condition of probation after a conviction in
23 a criminal proceeding involving domestic violence, as defined in
24 Section 13700, or elder abuse, as defined in Section 368, or that
25 is an order described in paragraph (3), shall constitute contempt
26 of court, a misdemeanor, punishable by imprisonment in a county
27 jail for not more than one year, by a fine of not more than one
28 thousand dollars (\$1,000), or by both that imprisonment and fine.

29 (2) If a violation of paragraph (1) results in a physical injury,
30 the person shall be imprisoned in a county jail for at least 48 hours,
31 whether a fine or imprisonment is imposed, or the sentence is
32 suspended.

33 (3) Paragraphs (1) and (2) apply to the following court orders:

34 (A) Any order issued pursuant to Section 6320 or 6389 of the
35 Family Code.

36 (B) An order excluding one party from the family dwelling or
37 from the dwelling of the other.

38 (C) An order enjoining a party from specified behavior that the
39 court determined was necessary to effectuate the orders described
40 in paragraph (1).

(4) A second or subsequent conviction for a violation of any order described in paragraph (1) occurring within seven years of a prior conviction for a violation of any of those orders and involving an act of violence or “a credible threat” of violence, as provided in subdivisions (c) and (d) of Section 139, is punishable by imprisonment in a county jail not to exceed one year, or in the state prison for 16 months or two or three years.

(5) The prosecuting agency of each county shall have the primary responsibility for the enforcement of the orders described in paragraph (1).

(d) (1) A person who owns, possesses, purchases, or receives a firearm knowing he or she is prohibited from doing so by the provisions of a protective order as defined in Section 136.2 of this code, Section 6218 of the Family Code, or Sections 527.6 or 527.8 of the Code of Civil Procedure, shall be punished under the provisions of subdivision (g) of Section 12021.

(2) A person subject to a protective order described in paragraph (1) shall not be prosecuted under this section for owning, possessing, purchasing, or receiving a firearm to the extent that firearm is granted an exemption pursuant to subdivision (h) of Section 6389 of the Family Code.

(e) (1) If probation is granted upon conviction of a violation of subdivision (c), the court shall impose probation consistent with the provisions of Section 1203.097 of the Penal Code.

(2) If probation is granted upon conviction of a violation of subdivision (c), the conditions of probation may include, in lieu of a fine, one or both of the following requirements:

(A) That the defendant make payments to a battered women’s shelter, up to a maximum of one thousand dollars (\$1,000).

(B) That the defendant provide restitution to reimburse the victim for reasonable costs of counseling and other reasonable expenses that the court finds are the direct result of the defendant’s offense.

(3) For any order to pay a fine, make payments to a battered women’s shelter, or pay restitution as a condition of probation under this subdivision or subdivision (c), the court shall make a determination of the defendant’s ability to pay. In no event shall any order to make payments to a battered women’s shelter be made if it would impair the ability of the defendant to pay direct restitution to the victim or court-ordered child support.

(4) If the injury to a married person is caused in whole or in part by the criminal acts of his or her spouse in violation of subdivision (c), the community property may not be used to discharge the liability of the offending spouse for restitution to the injured spouse required by Section 1203.04, as operative on or before August 2, 1995, or Section 1202.4, or to a shelter for costs with regard to the injured spouse and dependents required by this subdivision, until all separate property of the offending spouse is exhausted.

(5) Any person violating any order described in subdivision (c) may be punished for any substantive offenses described under Section 136.1 or 646.9. No finding of contempt shall be a bar to prosecution for a violation of Section 136.1 or 646.9. However, any person held in contempt for a violation of subdivision (c) shall be entitled to credit for any punishment imposed as a result of that violation against any sentence imposed upon conviction of an offense described in Section 136.1 or 646.9. Any conviction or acquittal for any substantive offense under Section 136.1 or 646.9 shall be a bar to a subsequent punishment for contempt arising out of the same act.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

~~SEC. 2. Section 1050 of the Penal Code is amended to read:~~

~~1050. (a) The welfare of the people of the State of California requires that all proceedings in criminal cases shall be set for trial and heard and determined at the earliest possible time. To this end, the Legislature finds that the criminal courts are becoming increasingly congested with resulting adverse consequences to the welfare of the people and the defendant. Excessive continuances contribute substantially to this congestion and cause substantial hardship to victims and other witnesses. Continuances also lead to longer periods of presentence confinement for those defendants in custody and the concomitant overcrowding and increased~~

1 expenses of local jails. It is therefore recognized that the people,
2 the defendant, and the victims and other witnesses have the right
3 to an expeditious disposition, and to that end it shall be the duty
4 of all courts and judicial officers and of all counsel, both for the
5 prosecution and the defense, to expedite these proceedings to the
6 greatest degree that is consistent with the ends of justice. In
7 accordance with this policy, criminal cases shall be given
8 precedence over, and set for trial and heard without regard to the
9 pendency of, any civil matters or proceedings. In further accordance
10 with this policy, death penalty cases in which both the prosecution
11 and the defense have informed the court that they are prepared to
12 proceed to trial shall be given precedence over, and set for trial
13 and heard without regard to the pendency of, other criminal cases
14 and any civil matters or proceedings, unless the court finds in the
15 interest of justice that it is not appropriate.

16 (b) To continue any hearing in a criminal proceeding, including
17 the trial, (1) a written notice shall be filed and served on all parties
18 to the proceeding at least two court days before the hearing sought
19 to be continued, together with affidavits or declarations detailing
20 specific facts showing that a continuance is necessary and (2)
21 within two court days of learning that he or she has a conflict in
22 the scheduling of any court hearing, including a trial, an attorney
23 shall notify the calendar clerk of each court involved, in writing,
24 indicating which hearing was set first. A party shall not be deemed
25 to have been served within the meaning of this section until that
26 party actually has received a copy of the documents to be served,
27 unless the party, after receiving actual notice of the request for
28 continuance, waives the right to have the documents served in a
29 timely manner. Regardless of the proponent of the motion, the
30 prosecuting attorney shall notify the people's witnesses and the
31 defense attorney shall notify the defense's witnesses of the notice
32 of motion, the date of the hearing, and the witnesses' right to be
33 heard by the court.

34 (c) Notwithstanding subdivision (b), a party may make a motion
35 for a continuance without complying with the requirements of that
36 subdivision. However, unless the moving party shows good cause
37 for the failure to comply with those requirements, the court may
38 impose sanctions as provided in Section 1050.5.

39 (d) When a party makes a motion for a continuance without
40 complying with the requirements of subdivision (b), the court shall

1 hold a hearing on whether there is good cause for the failure to
2 comply with those requirements. At the conclusion of the hearing,
3 the court shall make a finding whether good cause has been shown
4 and, if it finds that there is good cause, shall state on the record
5 the facts proved that justify its finding. A statement of the finding
6 and a statement of facts proved shall be entered in the minutes. If
7 the moving party is unable to show good cause for the failure to
8 give notice, the motion for continuance shall not be granted.

9 (e) ~~Continuances shall be granted only upon a showing of good~~
10 ~~cause. Neither the convenience of the parties nor a stipulation of~~
11 ~~the parties is in and of itself good cause.~~

12 (f) ~~At the conclusion of the motion for continuance, the court~~
13 ~~shall make a finding whether good cause has been shown and, if~~
14 ~~it finds that there is good cause, shall state on the record the facts~~
15 ~~proved that justify its finding. A statement of facts proved shall~~
16 ~~be entered in the minutes.~~

17 (g) (1) ~~When deciding whether or not good cause for a~~
18 ~~continuance has been shown, the court shall consider the general~~
19 ~~convenience and prior commitments of all witnesses, including~~
20 ~~peace officers. Both the general convenience and prior~~
21 ~~commitments of each witness also shall be considered in selecting~~
22 ~~a continuance date if the motion is granted. The facts as to~~
23 ~~inconvenience or prior commitments may be offered by the witness~~
24 ~~or by a party to the case.~~

25 (2) ~~For purposes of this section, “good cause” includes, but is~~
26 ~~not limited to, those cases involving murder, as defined in~~
27 ~~subdivision (a) of Section 187, allegations that stalking, as defined~~
28 ~~in Section 646.9, a violation of one or more of the sections~~
29 ~~specified in subdivision (a) of Section 11165.1 or Section 11165.6,~~
30 ~~or domestic violence as defined in Section 13700, or elder abuse~~
31 ~~as defined in Section 368, or a case being handled in the Career~~
32 ~~Criminal Prosecution Program pursuant to Sections 999b through~~
33 ~~999h, or a hate crime, as defined in Title 11.6 (commencing with~~
34 ~~Section 422.6) of Part 1, has occurred and the prosecuting attorney~~
35 ~~assigned to the case has another trial, preliminary hearing, or~~
36 ~~motion to suppress in progress in that court or another court. A~~
37 ~~continuance under this paragraph shall be limited to a maximum~~
38 ~~of 10 additional court days.~~

39 (3) ~~Only one continuance per case may be granted to the people~~
40 ~~under this subdivision for cases involving stalking, hate crimes,~~

1 or cases handled under the Career Criminal Prosecution Program.
2 Any continuance granted to the people in a case involving stalking
3 or handled under the Career Criminal Prosecution Program shall
4 be for the shortest time possible, not to exceed 10 court days.

5 (h) Upon a showing that the attorney of record at the time of
6 the defendant's first appearance in the superior court on an
7 indictment or information is a Member of the Legislature of this
8 state and that the Legislature is in session or that a legislative
9 interim committee of which the attorney is a duly appointed
10 member is meeting or is to meet within the next seven days, the
11 defendant shall be entitled to a reasonable continuance not to
12 exceed 30 days.

13 (i) A continuance shall be granted only for that period of time
14 shown to be necessary by the evidence considered at the hearing
15 on the motion. Whenever any continuance is granted, the court
16 shall state on the record the facts proved that justify the length of
17 the continuance, and those facts shall be entered in the minutes.

18 (j) Whenever it shall appear that any court may be required,
19 because of the condition of its calendar, to dismiss an action
20 pursuant to Section 1382, the court must immediately notify the
21 Chair of the Judicial Council.

22 (k) This section shall not apply when the preliminary
23 examination is set on a date less than 10 court days from the date
24 of the defendant's arraignment on the complaint, and the
25 prosecution or the defendant moves to continue the preliminary
26 examination to a date not more than 10 court days from the date
27 of the defendant's arraignment on the complaint.

28 (l) This section is directory only and does not mandate dismissal
29 of an action by its terms.

30 SEC. 3. Section 12021 of the Penal Code is amended to read:

31 12021. (a) (1) Any person who has been convicted of a felony
32 under the laws of the United States, the State of California, or any
33 other state, government, or country or of an offense enumerated
34 in subdivision (a), (b), or (d) of Section 12001.6, or who is addicted
35 to the use of any narcotic drug, and who owns, purchases, receives,
36 or has in his or her possession or under his or her custody or control
37 any firearm is guilty of a felony.

38 (2) Any person who has two or more convictions for violating
39 paragraph (2) of subdivision (a) of Section 417 and who owns,

1 purchases, receives, or has in his or her possession or under his or
2 her custody or control any firearm is guilty of a felony.

3 ~~(b) Notwithstanding subdivision (a), any person who has been~~
4 ~~convicted of a felony or of an offense enumerated in Section~~
5 ~~12001.6, when that conviction results from certification by the~~
6 ~~juvenile court for prosecution as an adult in an adult court under~~
7 ~~Section 707 of the Welfare and Institutions Code, and who owns~~
8 ~~or has in his or her possession or under his or her custody or control~~
9 ~~any firearm is guilty of a felony.~~

10 ~~(c) (1) Except as provided in subdivision (a) or paragraph (2)~~
11 ~~of this subdivision, any person who has been convicted of a~~
12 ~~misdemeanor violation of Section 71, 76, 136.1, 136.5, or 140,~~
13 ~~subdivision (d) of Section 148, Section 171b, 171c, 171d, 186.28,~~
14 ~~240, 241, 242, 243, 244.5, 245, 245.5, 246.3, 247, 273.5, 273.6,~~
15 ~~368, 417, 417.6, 422, 626.9, 646.9, 12023, or 12024, subdivision~~
16 ~~(b) or (d) of Section 12034, Section 12040, subdivision (b) of~~
17 ~~Section 12072, subdivision (a) of former Section 12100, Section~~
18 ~~12220, 12320, or 12590, or Section 8100, 8101, or 8103 of the~~
19 ~~Welfare and Institutions Code, any firearm-related offense pursuant~~
20 ~~to Sections 871.5 and 1001.5 of the Welfare and Institutions Code,~~
21 ~~or of the conduct punished in paragraph (3) of subdivision (g) of~~
22 ~~Section 12072, and who, within 10 years of the conviction, owns,~~
23 ~~purchases, receives, or has in his or her possession or under his or~~
24 ~~her custody or control, any firearm is guilty of a public offense,~~
25 ~~which shall be punishable by imprisonment in a county jail not~~
26 ~~exceeding one year or in the state prison, by a fine not exceeding~~
27 ~~one thousand dollars (\$1,000), or by both that imprisonment and~~
28 ~~fine. The court, on forms prescribed by the Department of Justice,~~
29 ~~shall notify the department of persons subject to this subdivision.~~
30 ~~However, the prohibition in this paragraph may be reduced,~~
31 ~~eliminated, or conditioned as provided in paragraph (2) or (3).~~

32 ~~(2) Any person employed as a peace officer described in Section~~
33 ~~830.1, 830.2, 830.31, 830.32, 830.33, or 830.5 whose employment~~
34 ~~or livelihood is dependent on the ability to legally possess a~~
35 ~~firearm, who is subject to the prohibition imposed by this~~
36 ~~subdivision because of a conviction under Section 273.5, 273.6,~~
37 ~~or 646.9, may petition the court only once for relief from this~~
38 ~~prohibition. The petition shall be filed with the court in which the~~
39 ~~petitioner was sentenced. If possible, the matter shall be heard~~
40 ~~before the same judge who sentenced the petitioner. Upon filing~~

1 the petition, the clerk of the court shall set the hearing date and
2 shall notify the petitioner and the prosecuting attorney of the date
3 of the hearing. Upon making each of the following findings, the
4 court may reduce or eliminate the prohibition, impose conditions
5 on reduction or elimination of the prohibition, or otherwise grant
6 relief from the prohibition as the court deems appropriate:

7 (A) Finds by a preponderance of the evidence that the petitioner
8 is likely to use a firearm in a safe and lawful manner.

9 (B) Finds that the petitioner is not within a prohibited class as
10 specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1,
11 and the court is not presented with any credible evidence that the
12 petitioner is a person described in Section 8100 or 8103 of the
13 Welfare and Institutions Code.

14 (C) (i) Finds that the petitioner does not have a previous
15 conviction under this subdivision no matter when the prior
16 conviction occurred.

17 (ii) In making its decision, the court shall consider the
18 petitioner's continued employment, the interest of justice, any
19 relevant evidence, and the totality of the circumstances. The court
20 shall require, as a condition of granting relief from the prohibition
21 under this section, that the petitioner agree to participate in
22 counseling as deemed appropriate by the court. Relief from the
23 prohibition shall not relieve any other person or entity from any
24 liability that might otherwise be imposed. It is the intent of the
25 Legislature that courts exercise broad discretion in fashioning
26 appropriate relief under this paragraph in cases in which relief is
27 warranted. However, nothing in this paragraph shall be construed
28 to require courts to grant relief to any particular petitioner. It is
29 the intent of the Legislature to permit persons who were convicted
30 of an offense specified in Section 273.5, 273.6, or 646.9 to seek
31 relief from the prohibition imposed by this subdivision.

32 (3) Any person who is subject to the prohibition imposed by
33 this subdivision because of a conviction of an offense prior to that
34 offense being added to paragraph (1) may petition the court only
35 once for relief from this prohibition. The petition shall be filed
36 with the court in which the petitioner was sentenced. If possible,
37 the matter shall be heard before the same judge that sentenced the
38 petitioner. Upon filing the petition, the clerk of the court shall set
39 the hearing date and notify the petitioner and the prosecuting
40 attorney of the date of the hearing. Upon making each of the

1 following findings, the court may reduce or eliminate the
2 prohibition, impose conditions on reduction or elimination of the
3 prohibition, or otherwise grant relief from the prohibition as the
4 court deems appropriate:

5 (A) Finds by a preponderance of the evidence that the petitioner
6 is likely to use a firearm in a safe and lawful manner.

7 (B) Finds that the petitioner is not within a prohibited class as
8 specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1,
9 and the court is not presented with any credible evidence that the
10 petitioner is a person described in Section 8100 or 8103 of the
11 Welfare and Institutions Code.

12 (C) (i) Finds that the petitioner does not have a previous
13 conviction under this subdivision, no matter when the prior
14 conviction occurred.

15 (ii) In making its decision, the court may consider the interest
16 of justice, any relevant evidence, and the totality of the
17 circumstances. It is the intent of the Legislature that courts exercise
18 broad discretion in fashioning appropriate relief under this
19 paragraph in cases in which relief is warranted. However, nothing
20 in this paragraph shall be construed to require courts to grant relief
21 to any particular petitioner.

22 (4) Law enforcement officials who enforce the prohibition
23 specified in this subdivision against a person who has been granted
24 relief pursuant to paragraph (2) or (3) shall be immune from any
25 liability for false arrest arising from the enforcement of this
26 subdivision unless the person has in his or her possession a certified
27 copy of the court order that granted the person relief from the
28 prohibition. This immunity from liability shall not relieve any
29 person or entity from any other liability that might otherwise be
30 imposed.

31 (d) (1) Any person who, as an express condition of probation,
32 is prohibited or restricted from owning, possessing, controlling,
33 receiving, or purchasing a firearm and who owns, purchases,
34 receives, or has in his or her possession or under his or her custody
35 or control, any firearm but who is not subject to subdivision (a) or
36 (e) is guilty of a public offense, which shall be punishable by
37 imprisonment in a county jail not exceeding one year or in the
38 state prison, by a fine not exceeding one thousand dollars (\$1,000),
39 or by both that imprisonment and fine. The court, on forms
40 provided by the Department of Justice, shall notify the department

1 of persons subject to this subdivision. The notice shall include a
2 copy of the order of probation and a copy of any minute order or
3 abstract reflecting the order and conditions of probation.

4 (2) For any person who is subject to subdivision (a), (b), or (c),
5 the court shall, at the time judgment is imposed, provide on a form
6 supplied by the Department of Justice, a notice to the defendant
7 prohibited by this section from owning, purchasing, receiving,
8 possessing or having under his or her custody or control, any
9 firearm. The notice shall inform the defendant of the prohibition
10 regarding firearms and include a form to facilitate the transfer of
11 firearms. Failure to provide the notice shall not be a defense to a
12 violation of this section.

13 (e) Any person who (1) is alleged to have committed an offense
14 listed in subdivision (b) of Section 707 of the Welfare and
15 Institutions Code, an offense described in subdivision (b) of Section
16 1203.073, any offense enumerated in paragraph (1) of subdivision
17 (c), or any offense described in subdivision (a) of Section 12025,
18 subdivision (a) of Section 12031, or subdivision (a) of Section
19 12034, and (2) is subsequently adjudged a ward of the juvenile
20 court within the meaning of Section 602 of the Welfare and
21 Institutions Code because the person committed an offense listed
22 in subdivision (b) of Section 707 of the Welfare and Institutions
23 Code, an offense described in subdivision (b) of Section 1203.073,
24 any offense enumerated in paragraph (1) of subdivision (c), or any
25 offense described in subdivision (a) of Section 12025, subdivision
26 (a) of Section 12031, or subdivision (a) of Section 12034, shall
27 not own, or have in his or her possession or under his or her
28 custody or control, any firearm until the age of 30 years. A
29 violation of this subdivision shall be punishable by imprisonment
30 in a county jail not exceeding one year or in the state prison, by a
31 fine not exceeding one thousand dollars (\$1,000), or by both that
32 imprisonment and fine. The juvenile court, on forms prescribed
33 by the Department of Justice, shall notify the department of persons
34 subject to this subdivision. Notwithstanding any other law, the
35 forms required to be submitted to the department pursuant to this
36 subdivision may be used to determine eligibility to acquire a
37 firearm.

38 (f) Subdivision (a) shall not apply to a person who has been
39 convicted of a felony under the laws of the United States unless
40 either of the following criteria is satisfied:

1 ~~(1) Conviction of a like offense under California law can only~~
2 ~~result in imposition of felony punishment.~~

3 ~~(2) The defendant was sentenced to a federal correctional facility~~
4 ~~for more than 30 days, or received a fine of more than one thousand~~
5 ~~dollars (\$1,000), or received both punishments.~~

6 ~~(g) (1) Every person who purchases or receives, or attempts to~~
7 ~~purchase or receive, a firearm knowing that he or she is prohibited~~
8 ~~from doing so by a temporary restraining order or injunction issued~~
9 ~~pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure,~~
10 ~~a protective order as defined in Section 6218 of the Family Code,~~
11 ~~a protective order issued pursuant to Section 136.2 or 646.91 of~~
12 ~~this code, or a protective order issued pursuant to Section 15657.03~~
13 ~~of the Welfare and Institutions Code, is guilty of a public offense,~~
14 ~~which shall be punishable by imprisonment in a county jail not~~
15 ~~exceeding one year or in the state prison, by a fine not exceeding~~
16 ~~one thousand dollars (\$1,000), or by both that imprisonment and~~
17 ~~fine.~~

18 ~~(2) Every person who owns or possesses a firearm knowing that~~
19 ~~he or she is prohibited from doing so by a temporary restraining~~
20 ~~order or injunction issued pursuant to Section 527.6 or 527.8 of~~
21 ~~the Code of Civil Procedure, a protective order as defined in~~
22 ~~Section 6218 of the Family Code, a protective order issued pursuant~~
23 ~~to Section 136.2 or 646.91 of this code, or a protective order issued~~
24 ~~pursuant to Section 15657.03 of the Welfare and Institutions Code,~~
25 ~~is guilty of a public offense, which shall be punishable by~~
26 ~~imprisonment in a county jail not exceeding one year, by a fine~~
27 ~~not exceeding one thousand dollars (\$1,000), or by both that~~
28 ~~imprisonment and fine.~~

29 ~~(3) The Judicial Council shall provide notice on all protective~~
30 ~~orders that the respondent is prohibited from owning, possessing,~~
31 ~~purchasing, receiving, or attempting to purchase or receive a~~
32 ~~firearm while the protective order is in effect. The order shall also~~
33 ~~state that the firearm shall be relinquished to the local law~~
34 ~~enforcement agency for that jurisdiction or sold to a licensed gun~~
35 ~~dealer, and that proof of surrender or sale shall be filed within a~~
36 ~~specified time of receipt of the order. The order shall state the~~
37 ~~penalties for a violation of the prohibition. The order shall also~~
38 ~~state on its face the expiration date for relinquishment.~~

1 ~~(4) If probation is granted upon conviction of a violation of this~~
2 ~~subdivision, the court shall impose probation consistent with~~
3 ~~Section 1203.097.~~

4 ~~(h) (1) A violation of subdivision (a), (b), (c), (d), or (e) is~~
5 ~~justifiable where all of the following conditions are met:~~

6 ~~(A) The person found the firearm or took the firearm from a~~
7 ~~person who was committing a crime against him or her.~~

8 ~~(B) The person possessed the firearm no longer than was~~
9 ~~necessary to deliver or transport the firearm to a law enforcement~~
10 ~~agency for that agency's disposition according to law.~~

11 ~~(C) If the firearm was transported to a law enforcement agency,~~
12 ~~it was transported in accordance with paragraph (18) of subdivision~~
13 ~~(a) of Section 12026.2.~~

14 ~~(D) If the firearm is being transported to a law enforcement~~
15 ~~agency, the person transporting the firearm has given prior notice~~
16 ~~to the law enforcement agency that he or she is transporting the~~
17 ~~firearm to the law enforcement agency for disposition according~~
18 ~~to law.~~

19 ~~(2) Upon the trial for violating subdivision (a), (b), (c), (d), or~~
20 ~~(e), the trier of fact shall determine whether the defendant was~~
21 ~~acting within the provisions of the exemption created by this~~
22 ~~subdivision.~~

23 ~~(3) The defendant has the burden of proving by a preponderance~~
24 ~~of the evidence that he or she comes within the provisions of the~~
25 ~~exemption created by this subdivision.~~

26 ~~(i) Subject to available funding, the Attorney General, working~~
27 ~~with the Judicial Council, the California Alliance Against Domestic~~
28 ~~Violence, prosecutors, and law enforcement, probation, and parole~~
29 ~~officers, shall develop a protocol for the implementation of the~~
30 ~~provisions of this section. The protocol shall be designed to~~
31 ~~facilitate the enforcement of restrictions on firearm ownership,~~
32 ~~including provisions for giving notice to defendants who are~~
33 ~~restricted, provisions for informing those defendants of the~~
34 ~~procedures by which defendants shall dispose of firearms when~~
35 ~~required to do so, provisions explaining how defendants shall~~
36 ~~provide proof of the lawful disposition of firearms, and provisions~~
37 ~~explaining how defendants may obtain possession of seized~~
38 ~~firearms when legally permitted to do so pursuant to this section~~
39 ~~or any other provision of law. The protocol shall be completed on~~
40 ~~or before January 1, 2005.~~

1 ~~SEC. 4. No reimbursement is required by this act pursuant to~~
2 ~~Section 6 of Article XIII B of the California Constitution because~~
3 ~~the only costs that may be incurred by a local agency or school~~
4 ~~district will be incurred because this act creates a new crime or~~
5 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
6 ~~for a crime or infraction, within the meaning of Section 17556 of~~
7 ~~the Government Code, or changes the definition of a crime within~~
8 ~~the meaning of Section 6 of Article XIII B of the California~~
9 ~~Constitution.~~

10 ~~SEC. 5. This act is an urgency statute necessary for the~~
11 ~~immediate preservation of the public peace, health, or safety within~~
12 ~~the meaning of Article IV of the Constitution and shall go into~~
13 ~~immediate effect. The facts constituting the necessity are:~~

14 ~~In order to ensure public safety concerning elder abuse, it is~~
15 ~~necessary that this act take effect immediately.~~